

STATE OF MICHIGAN
COURT OF APPEALS

LEONARD T. AMORE,

Plaintiff-Appellant,

v

DETROIT INSTITUTE OF ARTS,

Defendant/Cross-Plaintiff-
Appellee/Cross-Appellant,

and

RICHARD LAWRENCE, a/k/a RICHARD
LORANT, d/b/a SOLE PROPRIETOR,

Defendant/Cross-Defendant-
Appellee/Cross-Appellee,

and

PARK RITE, INC.,

Defendant/Cross-Defendant-
Appellee.

Before: Bandstra, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

In this slip and fall case, plaintiff appeals as of right the trial court order granting summary disposition in favor of defendants. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff alleges that he was injured when he slipped on black ice he encountered in a parking lot at the Detroit Science Center. The lot was owned by defendant Detroit Institute of Arts (DIA), and operated and maintained by defendant Park Rite, Inc. Defendant Richard Lawrence provided snow plowing services for the lot.

UNPUBLISHED

October 6, 2005

No. 262750

Wayne Circuit Court

LC No. 04-403517-NO

Plaintiff was injured on February 2, 2003. The weather conditions were misty and foggy, with temperatures hovering around the freezing point. One inch of snow fell the previous day, but there was no precipitation on the day plaintiff fell. Snow was removed from the lot and its surface was salted the day before the accident, but no snow removal or salting occurred on the day of the accident.

Plaintiff filed suit against all defendants, alleging negligence. On defendants' motion for summary disposition, the trial court held that plaintiff had no cause of action against Lawrence because plaintiff was not party to any snow removal contract. The trial court also held that the DIA had no cause of action on its cross-claim against Lawrence because Lawrence was not contractually obligated to indemnify the DIA for its invitees' injuries. The trial court dismissed plaintiff's claims against the remaining defendants on the ground that there was no evidence that defendants had actual or constructive notice of the dangerous condition for purposes of obligating them to remedy it.

"In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).

Plaintiff takes issue with the trial court's ruling, arguing that under the trial court's rationale, a business invitor would have the incentive to ignore weather conditions in order to avoid any duty to take precautions against the resulting hazards. However, plaintiff exaggerates, because deliberate indifference is constructive knowledge. See *York v City of Detroit (After Remand)*, 438 Mich 744, 761; 475 NW2d 346 (1991). A business invitor's duty to invitees is to "inspect the premises and, depending upon the circumstances, make any necessary repairs or warn of any discovered hazards." *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 597; 614 NW2d 88 (2000). The question in this case is whether a material question of fact exists concerning whether defendants had a duty to discover and mitigate the hazards of the black ice upon which plaintiff allegedly slipped.

A premises owner is held to no absolute duty to diminish the hazards of ordinary winter precipitation. *Mann v Schusteric Enterprises, Inc.*, 470 Mich 320, 332-333, 333 n 13; 683 NW2d 573 (2004). Where the condition is open and obvious, such a duty exists only if some special aspect renders the condition unreasonably dangerous. *Id.* at 332. However, in this case, the trial court held, and we agree, that the evidence showed that the alleged condition was not open and obvious.

Where an ice hazard is not open and obvious, an invitor is obliged to exercise reasonable care to protect the invitee from that hazard. See *id.*; *Quinlivan v The Great Atlantic & Pacific Tea Co, Inc.*, 395 Mich 244, 261; 235 NW2d 732 (1975). The question, then, is whether the trial court erred in concluding that there was no evidence that defendants had sufficient notice of the icy condition to trigger a duty to lessen the dangers of it. See *Hampton v Waste Mgt of Michigan, Inc.*, 236 Mich App 598, 604; 601 NW2d 172 (1999).

According to plaintiff, there was some snow on the ground and the temperatures ranged between thirty-five and thirty-one degrees when he fell. Taking plaintiff's account of the weather at face value, it is apparent that plaintiff was on the DIA's premises on a day when

temperatures alternated between causing slow melting of the patches of snow, and holding the status quo or just beginning to allow water to freeze. The report confirms that there was no precipitation that day.

We conclude that defendants were not negligent for failing to inspect or treat the premises for ice on a day where there had been no precipitation, and where temperatures never went substantially below freezing for a significant period. Plaintiff was the victim of a convergence of circumstances that resulted in the formation of a patch of black ice where none would ordinarily be expected. Defendants' duty to inspect did not extend to checking continuously for occurrences of black ice on a day without precipitation, as the temperature shifted from just above to just at freezing. The trial court correctly held that defendants did not have sufficient notice of the hazardous condition to trigger their duty to diminish that hazard.¹

In light of our resolution of this case, the DIA's issue on cross-appeal is moot.

We affirm.

/s/ Richard A. Bandstra

/s/ Pat M. Donofrio

I concur in result only.

/s/ Janet T. Neff

¹ Also militating against the conclusion that defendants were obliged to go to great lengths to discover and treat black ice under these conditions is that tripping in a parking lot does not typically cause severe injury, plaintiff's experience notwithstanding. See *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 520; 629 NW2d 384 (2001) (declaring that the severity of the alleged defect bears on the question of duty, and observing that "it cannot be expected that a typical person tripping on a pothole and falling to the ground would suffer severe injury").